

REMARKS

The paper is in response to the Office Action mailed July 28, 2008 ("the Office Action"). Claim 13 is amended. Claims 1-4, 6, and 9-21 are pending (claims 5, 7, and 8 having been canceled by a previous amendment). Applicants respectfully request reconsideration of the application in view of the above amendments to the claims and the following remarks. For Examiner's convenience and reference, Applicants present remarks in the order that the Office Action raises the corresponding issues.

In connection with the prosecution of this case and any related cases, Applicants have, and/or may, discuss various aspects of the disclosure of the cited references as those references are then understood by the Applicants. Because such discussion could reflect an incomplete or incorrect understanding of one or more of the references, the position of the Applicants with respect to a reference is not necessarily fixed or irrevocable. Applicants thus hereby reserve the right, both during and after prosecution of this case, to modify the views expressed with regard to any reference.

Please note Applicants do not intend the following remarks to be an exhaustive enumeration of the distinctions between any cited references and the claims. Rather, Applicants present the distinctions below solely by way of example to illustrate some of the differences between the claims and the cited references. Finally, Applicants request that Examiner carefully review any references discussed below to ensure that Applicants' understanding and discussion of any reference is consistent with Examiner's understanding.

Unless otherwise explicitly stated, the term "Applicants" is used herein generically and may refer to a single inventor, a set of inventors, an appropriate assignee, or any other entity or person with authority to prosecute this application.

If the next office action rejects any of claims 1-4, 6, and 9-21 using a new ground of rejection, the next office action must be nonfinal because the current Office Action fails to establish a *prima facie* case that claims 1-4, 6, and 9-21 are anticipated by *Anderson et al.* (U.S. Patent No. 5,850,388). MPEP §706.07(a) states that "second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is

neither necessitated by applicant’s amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).” In the present case, if the next office action rejects any of claims 1-4, 6, and 9-21 using a new ground of rejection, such a rejection would not be necessitated by this response because none of the rejected claims was amended in order to distinguish over *Anderson*, as explained in the following remarks. Moreover, this new rejection would not have been based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) because no information disclosure was filed and/or none was filed with the fee. Accordingly, under MPEP §706.07(a), the next Office Action must be non-final if it rejects any of claims 1-4, 6, and 9-21 using a new ground of rejection.

I. Rejection Under 35 U.S.C. §102

The Office Action rejects claims 1-4, 6, and 9-21 under 35 U.S.C. §102(b) over *Anderson et al.* (U.S. Patent No. 5,850,388). Applicants respectfully traverse this rejection for at least the reason that the Office Action fails to present a *prima facie* case that claims 1-4, 6, and 9-21 are anticipated. When rejecting a claim under 35 U.S.C. §102, it is Examiner’s burden to establish a *prima facie* case that the claim is anticipated.¹ According to MPEP §2131, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”

A. Claims 1-4

Claim 1 recites, among other things, “displaying an interface screen to the user, the interface screen comprising...a determined error representation,...wherein displaying the determined error representation further comprises highlighting a portion of a metric graph that corresponds to a particular error when a user selects the particular error.”

According to the Examiner, the aforementioned limitation corresponds to Figure 20 of *Anderson*, which “illustrates how a split-screen display can be used to highlight one ISO protocol

¹ *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992) (“[i]f the examination at the initial state does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent.”).

layer, instantly revealing usage by the protocols detected on the network." *See Office Action*, p. 4. Figure 20 is copied below for the Examiner's convenience.

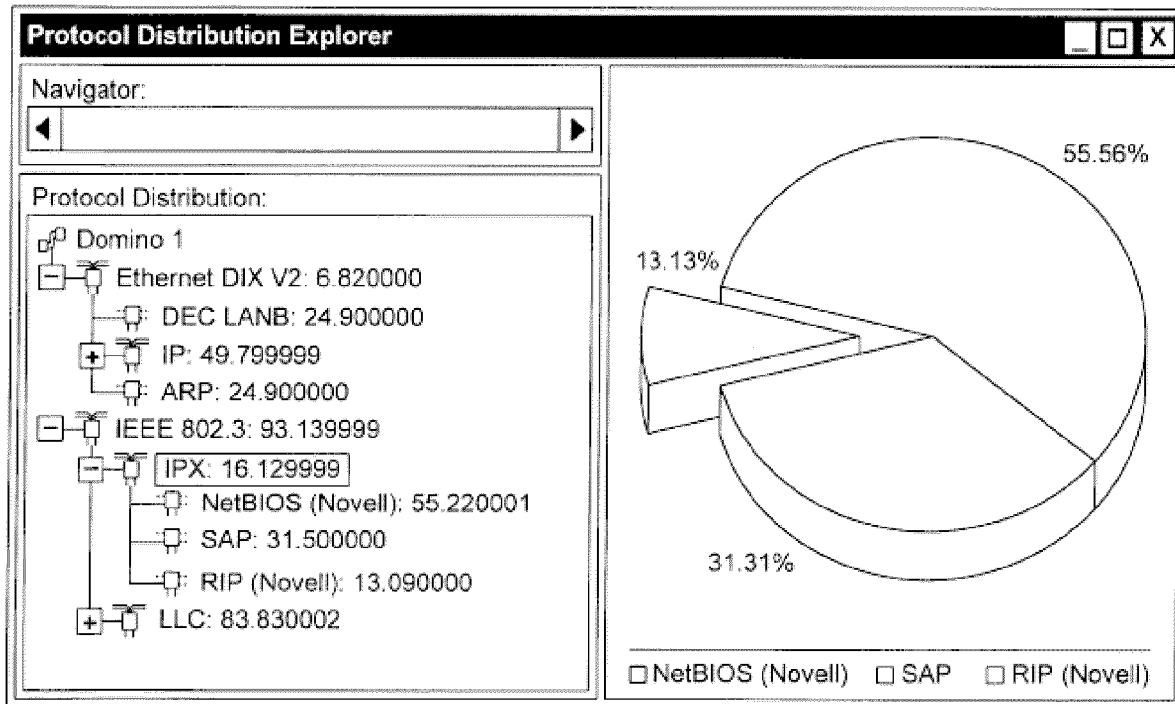


FIG. 20

As noted by the Examiner and as shown in Figure 20 above, protocol usage is highlighted in the "Protocol Distribution Explorer" of Figure 20. In contrast, claim 1 requires "displaying an interface screen to the user, the interface screen comprising...a determined error representation,...wherein displaying the determined error representation further comprises highlighting a portion of a metric graph that corresponds to a particular error when a user selects the particular error." (Emphasis added.) Nothing in Figure 20 corresponds to an error representation or to highlighting a portion of a metric graph that corresponds to a particular error, as required by claim 1. Moreover, Figure 21, which the Examiner relied on elsewhere as a display screen containing errors (*see, e.g.*, *Office Action*, p. 5), does not include a "metric graph," much less "highlighting a portion of a metric graph that corresponds to a particular error."

Because the Office Action fails to present a *prima facie* case that claim 1 is anticipated, the rejection is improper. Applicants therefore respectfully request that Examiner withdraw the

rejection of claim 1 under 35 U.S.C. §102(b). The rejection of dependent claims 2-4 should also be withdrawn at least because of their dependence from claim 1.

B. Claims 6-13 and 21

Claim 6 recites, among other things, "displaying a graphical user interface to the user, the graphical user interface comprising a first display screen containing a graphical representation of devices detected in the network topology; and linking the user to a second display screen containing errors determined in association with a particular device in the topology when the user selects the particular device in the first display."

In discussing the foregoing limitation, the Examiner cited a portion of *Anderson* that describes the user interface of *Anderson*'s Figure 21. *See Office Action*, p. 6 (citing col. 30, lines 26-39). Figure 21 is copied below for the Examiner's convenience.

| Event Explorer | | | |
|----------------|----------|-------------------|--|
| | Analyzer | Date / Time | Event |
| 5 | Domino 1 | 04/22/96 13:27:29 | IP address 0.0.0.0 is being used by both MAC station 00 00 00 00 and MAC station 00 00 81 11 77. |
| 6 | Domino 1 | 04/22/96 13:27:29 | An IP broadcast address of 0.0.0.0 is being used as a source address. |
| 7 | Domino 1 | 04/22/96 13:27:28 | 126 multicast frames have been detected. This exceeds the configured threshold. |
| 8 | Domino 1 | 04/22/96 13:27:29 | 121 broadcast frames have been detected. This exceeds the configured threshold. |
| 9 | Domino 1 | 04/22/96 13:27:27 | Event Logging Started |
| 10 | Domino 1 | 04/22/96 07:21:52 | Station 198.85.38.1 has sent one or more ICMP "port unreachable messages. The last notification of this was sent to station 198.85.34.113 and indicated that port 138 was unreachable. |
| 11 | Domino 1 | 04/22/96 07:21:36 | IP address 0.0.0.0 is being used by both MAC station 00 00 00 00 and MAC station 00 00 81 11 77. |
| 12 | Domino 1 | 04/22/96 07:21:36 | An IP broadcast address of 0.0.0.0 is being used as a source address. |

FIG. 21

The Examiner particularly noted, "The user can obtain detailed definitions of statistics and events as well as possible causes of each type of event by [selecting] the event or statistic displayed by the user interface." *See id.* (emphasis added). In contrast, claim 6 recites "linking the user to a second display screen containing errors...when the user selects [a] particular device

in the first display." (Emphasis added.) Contrary to the Examiner's implied assertion, selecting an event or statistic is not equivalent to selecting a particular device in a display.

Because the Office Action fails to present a *prima facie* case that claim 6 is anticipated, the rejection is improper. Applicants therefore respectfully request that Examiner withdraw the rejection of claim 6 under 35 U.S.C. §102(b). The rejection of dependent claims 7-13 and 21 should also be withdrawn at least because of their dependence from claim 6.

C. Claims 14-20

Claim 14 recites, among other things, "providing links between each device in [a] determined topology and determined errors corresponding to each device, each link operating to display a screen illustrating...the location of the error in the network topology."

In discussing the foregoing limitation, the Examiner cited a portion of *Anderson* that describes the user interface of *Anderson*'s Figure 21. *See Office Action*, p. 7 (citing col. 30, lines 26-39). (A copy of Figure 21 may be found in Section I.B above, in which the rejection of claim 6 is discussed.) In describing Figure 21, *Anderson* notes that "[a] user can obtain detailed definitions of statistics and events as well as possible causes of each type of event by [selecting] the event or statistic displayed by the user interface." However, "detailed definitions of statistics and events as well as possible causes of [an] event" do not constitute "the location of [an] error in [a] network topology," as claimed. (Emphasis added.)

Moreover, the display of Figure 21 "illustrates a preferred example of how detected events can be sorted and displayed with timestamps...." *See Anderson*, col. 30, lines 20-24 (emphasis added). Thus, the information provided in Figure 30 does not pertain to each device in a network, much less "providing links between each device in [a] determined topology and determined errors corresponding to each device," as claimed.

Because the Office Action fails to present a *prima facie* case that claim 14 is anticipated, the rejection is improper. Applicants therefore respectfully request that Examiner withdraw the rejection of claim 14 under 35 U.S.C. §102(b). The rejection of dependent claims 15-20 should also be withdrawn at least because of their dependence from claim 14.

II. Charge Authorization

The Commissioner is hereby authorized to charge payment of any of the following fees that may be applicable to this communication, or credit any overpayment, to Deposit Account No. 23-3178: (1) any filing fees required under 37 CFR § 1.16; (2) any patent application and reexamination processing fees under 37 CFR § 1.17; and/or (3) any post issuance fees under 37 CFR § 1.20. In addition, if any additional extension of time is required, which has not otherwise been requested, please consider this a petition therefor and charge any additional fees that may be required to Deposit Account No. 23-3178.

CONCLUSION

In view of the foregoing, Applicants submit that the pending claims are allowable. In the event that Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview or overcome by an Examiner's Amendment, Examiner is requested to contact the undersigned attorney.

The Commissioner is hereby authorized to charge payment of any of the following fees that may be applicable to this communication, or credit any overpayment, to Deposit Account No. 23-3178: (1) any filing fees required under 37 CFR § 1.16; and/or (2) any patent application and reexamination processing fees under 37 CFR § 1.17; and/or (3) any post issuance fees under 37 CFR § 1.20. In addition, if any additional extension of time is required, which has not otherwise been requested, please consider this a petition therefor and charge any additional fees that may be required to Deposit Account No. 23-3178.

Dated this 28th day of October, 2008.

Respectfully submitted,

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